

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACKIE CHURCH,

CASE NO. 2:06-cv-764

Petitioner,

JUDGE HOLSCHUH

MAGISTRATE JUDGE ABEL

v.

JEFFREY WOLFE, Warden,

Respondent.

ORDER

On July 27, 2007, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED** and this action is hereby **DISMISSED**.

Petitioner asserts the ineffective assistance of counsel as cause for his procedural default of his claim that his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004). The ineffective assistance of counsel may constitute cause for a procedural default, so long as such claim has been presented to the state courts and is not itself procedurally defaulted. *Carpenter v. Edwards*, 529 U.S. 446, 451-52 (2000). Petitioner has never presented to the state courts any claim of ineffective assistance of counsel. Further, the ineffective assistance of counsel cannot constitute cause for petitioner's procedural default in failing to present a *Blakely* claim to the Ohio Supreme Court, since he had no constitutional right to effective counsel in such proceeding. See *Gulertekin v. Tinnelman-Cooper*, 340 F.3d 415, 425 (6th Cir.2003), citing *Coleman v. Thompson*, 501 U.S. 722, 752-53 (1991); *Pennsylvania v.. Finley*, 481 U.S. 551, 555 (1987)("[T]he right to counsel extends

to the first appeal of right, and no further."); *Lopez v. Wilson*, 426 F.3d 339, 352 (6th Cir.2005).

Petitioner has failed to demonstrate cause for his procedural default.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of the *Report and Recommendation*. For all of the foregoing reasons, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: August 22, 2007

/s/ John D. Holschuh
JOHN D. HOLSCHUH
United States District Judge